

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF OAK HAVEN)	
WATER AND SEWER, INC.)	
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ALLEGED VIOLATION OF KRS)	CASE NO. 92-267
CHAPTER 278 AND 807 KAR 5:071,)	
SECTION 7(1) AND (4))	

O R D E R

On June 29, 1992, an Order to show cause was issued by the Commission against Oak Haven Water and Sewer, Inc. ("Oak Haven") and Marvin Conrad, individually and as president of Oak Haven. The Order was issued on the basis of a utility inspection report filed December 16, 1991 by a utility investigator employed by the Commission. The report charges Oak Haven with nine violations of 807 KAR 5:071, Section 7(1), and two violations of 807 KAR 5:071, Section 7(4). The Order directed Oak Haven and Mr. Conrad to appear before the Commission and show cause why they should not be penalized pursuant to KRS 278.990 for failure to comply with Commission regulations. The Order further directed Oak Haven to submit a written response to the charges made in the inspection report. Although the Order was served upon Mr. Conrad, individually and as president of Oak Haven, by certified mail on July 2, 1992, neither Mr. Conrad nor Oak Haven have filed a response to the report.

On July 29, 1992, a hearing was held before the Commission in accordance with the Order. Neither Oak Haven nor Mr. Conrad appeared nor were represented at the hearing.

FINDINGS OF FACT

Oak Haven owns, controls, and operates facilities used for the treatment of sewage for the public. The facilities are located in Pendleton County and serve approximately 25 customers. Oak Haven is a Kentucky corporation whose president is Mr. Conrad.

Oak Haven's facilities consist of a waste water treatment plant and a collection system which serves a small subdivision south of Falmouth. The treatment plant is an extended aeration in ground plant. On December 6, 1991, the facilities were inspected by a utility investigator employed by the Commission. The investigator had previously inspected the plant on approximately 10 or 11 other occasions. On the December 6, 1991 inspection, the investigator found 11 conditions which he cited as violations of Commission regulations. Nine of those conditions were violations of 807 KAR 5:071, Section 7(1). Two of those conditions were violations of 807 KAR 5:071, Section 7(4). Because neither Oak Haven nor Mr. Conrad responded to the report nor appeared at the hearing, no explanation was presented to the Commission for the violations.

CONCLUSIONS OF LAW

Oak Haven is a public utility subject to the jurisdiction of this Commission. By reason of its failure to properly maintain the

plant, Oak Haven has violated the provisions of 807 KAR 5:071, Section 7(1) and (4).

KRS 278.990(1) provides that any utility or any officer, agent or employee of a utility who "willfully violates" any provision of KRS Chapter 278, or any regulation promulgated under that Chapter, shall be subject to a penalty of up to \$2,500. A willful violation is a violation that is committed intentionally, not accidentally nor involuntarily. Muncie v. Commonwealth, 97 S.W.2d 606, 609, 265 Ky. 730, 736 (1936). In the matter of Mike Little Gas Company, Inc., Case No. 91-202,¹ this Commission held that a willful violation occurs when an officer, agent or employee of a utility knowingly violates any provision of KRS Chapter 278, or any regulation promulgated under that Chapter.

As the president of Oak Haven, Mr. Conrad was undoubtedly aware at all times that the facility was not in compliance with Commission regulations and it was his duty to take whatever action was appropriate to bring the system into compliance. His failure to do so was a knowing violation of the regulations for which the Commission may assess a penalty against both the utility and Mr. Conrad. Under the circumstances, a penalty of \$25 upon Oak Haven and a penalty of \$1,000 upon Mr. Conrad would be appropriate. If within 60 days from the date of this Order the violations found in

¹ Case No. 91-202, Mike Little Gas Company, Inc. Alleged Violation of KRS 278.160.

the report are corrected, suspension of the penalty against Mr. Conrad would also be appropriate.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. Oak Haven and Mr. Conrad are hereby determined to be in violation of 807 KAR 5:071, Section 7(1) and (4), for failing to operate Oak Haven's waste water treatment facility in accordance with the provisions of that regulation.

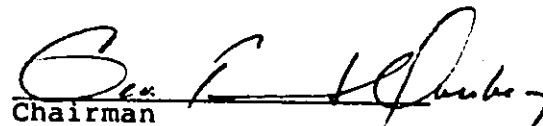
2. For such violation, Oak Haven is assessed a penalty of \$25 and Mr. Conrad is assessed a penalty of \$1,000. If within 60 days from the date of this Order the violations cited in the investigative report are corrected, the penalty assessed against Mr. Conrad shall be suspended.

3. The penalty assessed herein against Oak Haven shall be due within 20 days of the date of this Order. Payment shall be made by certified check or money order made payable to Treasurer, Commonwealth of Kentucky. Said check or money order shall be mailed or delivered to the Office of General Counsel, Public Service Commission, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky 40602.

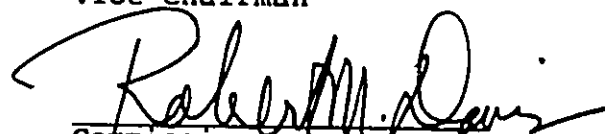
4. The penalty assessed against Mr. Conrad shall be subject to further Orders herein.

Done at Frankfort, Kentucky, this 27th day of August, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director